

FILED
STATE OF ALASKA
PAUL WAGGONER LAW COURTS
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2018 AUG -5 AM 11:46
CLERK APPELLATE COURT
BY _____
DEPUTY CLERK

August 5, 2019

Clerk of the Appellate Courts
303 K Street
Boney Building 4th Floor
Anchorage, AK 99501

Re: Burnett v. Martinezes v. GEICO
Supreme Court Nos. S-17041 and S-17132

**MARTINEZES' SUPPLEMENTAL AUTHORITY RE
WITNESS-ADVOCATE RULE**

GEICO raised the Witness-Advocate Rule in the trial court and the appellate court.
Professional Conduct Rule 3.7. Accordingly, Martinezes submit this Supplemental Authority.

This Rule is primarily directed to advocacy "at a trial," so does not literally apply to pretrial proceedings or appellate proceedings, but it should be considered now because it is being used as one of GEICO's tactics to interfere with the Martinezes' representation. Attorney Waggoner does not believe that Rule 3.7 applies to him in this case at all because GEICO's conclusory allegation that Waggoner negligently settled the case is made up; Mike Hanson settled the case in GEICO's name by making an offer developed by GEICO without advance notice to or participation by Paul Waggoner, who was in Montana with grandchildren at the time. See Exhibit A. Exhibit B is the prior but contemporaneous settlement communication from Waggoner to both Jacobus and Hanson suggestion an avenue of negotiation. These documents cannot be disputed because they appear on all three attorneys' email accounts.

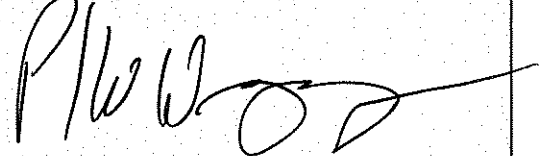
As Supplemental Authority regarding the use of this tactic Martinezes cite *Munn v. Bristol Bay Housing Authority*, 777 P.2d 188, 196-7 (Alaska 1989), and *Kanulie v. State*, 796 P.2d 844, 846 (Alaska 1990).

Rule 3.7 was discussed by the Court of Appeals in the context of the “unsworn witness” problem. That problem does apply to GEICO’s attorneys. *State v. Carlson*, 440 P.3d 364, 387 (Alaska App. 2019). See also *Darling v. State*, 520 P.2d 793 (Alaska 1974). Martinezes do not want to delay proceedings further but assert that this issue should be considered by the Court at oral argument.

To evaluate the “necessary witness” part of Rule 3.7 Martinezes have sought cooperation from GEICO as their insureds, and discovery, but have not benefited from any cooperation or been able to compel any discovery. The Anchorage trial court denied the Martinezes’ Motion To Reconsider the Order Granting Motion To Stay, dated July 8, 2019. Of course, a trial court can be expected to be cautious with matters on appeal even if they are tangential. *Durion v. Bakke*, 431 P.2d 499 (Alaska 1967). However, allowing factual discovery to proceed now would simplify the legal issues being presented, and expedite matters.

8/5/19

PAUL WAGGONER LAW



Paul W. Waggoner #7705070

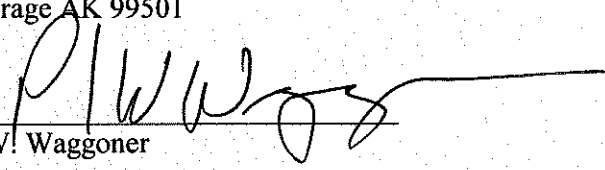
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by email August 5, 2019 on:

Kenneth P. Jacobus
310 K Street, Ste. 200
Anchorage, AK 99501

Mike Hanson,
413 G Street,
Anchorage, AK 99501;

Barry Kell
813 W. 3rd Avenue
Anchorage AK 99501



Paul W. Waggoner

Call & Hanson, P.C.

413 G Street
Anchorage, Alaska 99501-2126
Telephone (907) 258-8864
Facsimile (907) 258-8865

Blake H. Call
Michael J. Hanson

OF COUNSEL

Susan D. Mack

March 13, 2014

VIA FAX AND EMAIL

Kenneth Jacobus
310 K Street, Suite 200
Anchorage, AK 99501

RE: *Burnett v GEICO and Martinez*
Case No. : 4FA-12-02365 CI
Claim No. : 0225479670101091
Date of Loss : 11/23/2011
Our File No. : 1101.344

Dear Mr. Jacobus:

GEICO has determined to offer settlement of all claims of your client Mr. Burnett against GEICO's insureds Robert and Joshua Martinez in exchange for payment of all remaining liability limits, property damage and bodily injury, under the following terms:

1. GEICO will pay to Mr. Burnett all remaining liability policy limits, property damage and bodily injury, under the GEICO auto policy issued to Robert Martinez that amount totals \$140,062.24;
2. Mr. Burnett will provide full, standard releases of all claims against both Robert Martinez and Joshua Martinez with respect to the November 23, 2011 accident that is the subject of the above referenced lawsuit;
3. Mr. Burnett will authorize you to sign and you will sign a Stipulation for Dismissal With Prejudice with respect to all claims against Robert Martinez and Joshua Martinez in the Superior Court case, and will stipulate to amend the case caption to remove the Martinezes as parties;

This offer will remain open through 4:30 p.m. Alaska time on Monday, March 17, 2014.

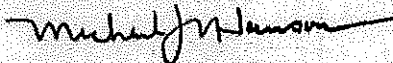
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Kenneth Jacobus
March 13, 2014
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Please feel free to contact me should you wish to further discuss this letter or GEICO's settlement offer.

Sincerely,

Call & Hanson, P.C.



Michael J. Hanson

cc: Paul Waggoner (*via email*)

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Marc G. Wilhelm

From: Paul W. Waggoner
Sent: Saturday, March 01, 2014 5:50 AM
To: kpjlaw@yahoo.com; mjh@chklaw.net
Cc: Paul W. Waggoner
Subject: Burnett v. Martinez and Geico

I wanted to make possible suggestions to preserve the status quo, get some money to Spud Burnett, protect the Martinez against a possible adverse verdict in excess of policy limits, and allow Burnett to continue to litigate his theories against Geico. Burnett claims that Geico assumed the duty to him to clean up the oil spill but failed to do so in a reasonable manner, hindered and delayed Burnett's efforts or opportunities to clean up the oil spill himself, and breached its obligations to Martinez to properly manage, adjust and settle Burnett's claims against Martinez. I do not have authority from anyone to reach a partial settlement on this basis, so this is for discussion purposes at this time. The agreement would be:

1. The trial schedule would be unchanged.
2. The remaining property damage policy limits (about \$25,000) would be paid to Burnett. In addition Burnett could continue to litigate his property damage claim against Martinez and Geico. If the award is greater than the amount of prior payments of policy limits for property damage, then Martinez will assign any rights they have against Geico to Burnett. In return, Burnett agrees not to attempt to collect any amounts from Martinez personally on the property damage award.
3. Burnett may continue to litigate his bodily injury claim against Martinez and Geico. If the award is greater than Martinez policy limits, then Martinez will assign any rights they have against Geico to Burnett. In return, Burnett agrees not to attempt to collect any amounts from Martinez personally on the bodily injury award.
4. The parties will schedule a mediation as soon as possible after the State issues its cleanup decision to see if the entire case can be settled.
5. The trial will not be sham trial. All parties will litigate the trial in good faith, but are free to advocate their own interests and beliefs.

B